



**THE ATTORNEY GENERAL
OF TEXAS**

**CRAWFORD C. MARTIN
ATTORNEY GENERAL**

AUSTIN, TEXAS 78711

June 16, 1967

Honorable Robert S. Calvert
Comptroller of Public Accounts
State Capitol
Austin, Texas 78711

Opinion No. M-92

Re: Whether the value of an indebtedness secured by mortgages against real estate located in Canada and held by a resident decedent of this State should be included in computing the amount of inheritance taxes due.

Dear Mr. Calvert:

You have requested the opinion of this Office on the above captioned question. We quote the following excerpt from your letter of request:

"We desire the opinion of your office with respect to the inclusion of mortgages against real estate located in Canada for inheritance tax purposes held by a resident of the State of Texas.

"... [The Decedent] died testate a resident of Harris County, Texas, on November 9, 1965, and among the assets of his estate were mortgages on real estate located in Canada and payable in Canada in the amount of \$22,581.00. These mortgages were omitted from the State Inheritance Tax Return by the attorney for the estate, because he stated that Texas did not have jurisdiction under Texas Inheritance Tax Laws over a mortgage on real property situated in Canada, to which this Department does not agree.

"It has been the rule of the Department for many years to include for inheritance tax

purposes intangibles owned by a resident of the State of Texas regardless of whether such intangibles are located within or without the State of Texas. This rule also covered intangibles subject to foreign jurisdiction.

"Please advise this Department whether our rule is correct."

A mortgage is merely security for the payment of a debt. 39 Tex.Jur.2d 12, Mortgages and Trust Deeds, Sec. 4, and authorities cited therein. We are therefore rephrasing your question to read as follows:

"Whether the value of an indebtedness secured by mortgages against real estate located in Canada and held by a resident decedent of this State should be included in computing the amount of inheritance taxes due."

Article 14.01, Chapter 14, Title 122A, Taxation-General 20A, Vernon's Civil Statutes, provides for the inheritance tax, in part, as follows:

"All property within the jurisdiction of this State, ..., regardless of whether such property is located within or without this State, ..., shall, upon passing to or for the use of any person, ... be subject to a tax ..."

The attorney for the estate has written us with regard to the matter under consideration, putting forth his contention that Article II(c) of the 1961 treaty between the United States and Canada (13 U.S.T. 382), in providing that debts shall be deemed to be situated at the place where the debtor was ordinarily resident, would, in the instant case, preclude the State of Texas from including in the estate the indebtedness, and mortgage securing the payment thereof.

Article I of such treaty, in part, provides as follows:

- "1. The taxes referred to in this Convention are:
 - (a) for the United States of America: the Federal estate tax;
 - (b) for Canada; the estate tax imposed by the Government of Canada."

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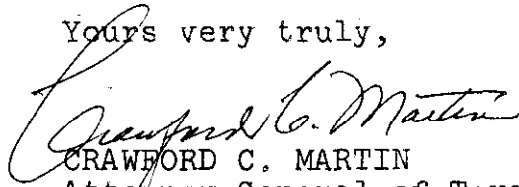
Such limitation excludes from coverage by the treaty the inheritance tax levied by the State of Texas or any other tax levied by any state and, therefore, such treaty has no bearing upon any such tax.

By Opinion No. O-6122 (1944), this Office upon authorities cited therein, expressed the opinion that the legal ownership of intangibles by one in Texas gives such intangibles a business situs in Texas and makes them "property within the jurisdiction of this State." The inclusion of such intangibles owned by Texas residents has been the administrative policy of the Comptroller's office since the date of such opinion and we have no basis for overturning such opinion or the administrative policy in conformity therewith. Therefore, it is the opinion of this Office that the value of the indebtedness secured by the mortgages should be included in the estate when computing the amount of inheritance taxes due.

SUMMARY

The value of an indebtedness secured by mortgages against real estate located in Canada and held by a resident decedent of this State should be included in the estate when computing the amount of inheritance taxes due.

Yours very truly,


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MMP:ms

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